

DISTRICT ADVISORY BOARD MINUTES DISTRICT I

June 4, 2001

7:00 p.m.

Atwater Community Center, 2755 E. 19th

Members Present

Council Member Brewer
Treatha Brown Foster
Kenneth Hemmen
Carrie Jones Williams
Lori Lawrence
Debby Moore
Celina Porter Robinson
Steve Roberts*
Marcia Traylor
Lois Tully-Gerber
Willard Walker
Ken Woodard

Members Absent

David Franks*
Sharon Myers*
James Thompson

Guest List

Joan Mitchell Childers, 2221 N Minnesota
Barbara Johns, 1501 E Looman
James Roseboro, 4518 Greenbriar
Willie Burton, 2356 N Poplar
David Donoghue, 2460 Longwood Cr
R.J. Sudbury, 7003 Mainsgate
Greg Ferris, P.O. Box 573
John McFadden, 5110 E 21st Street
Clark Nelson, 2420 N Woodlawn
Thomas Johnson, 2302 Gentry
Bob Kaplan, 430 N Market
Mary Jo Bond, 4024 Charron
Jane Eshelman, 2609 N Pershing

Staff Present

Scott Knebel, Planning Department
Heidi Farmer-Drew, Neighborhood Assistant

*Denotes District Advisory Board Alternates

ORDER OF BUSINESS

Call to Order

Council Member Brewer called the meeting to order at 7:00 p.m.

Approval of Minutes

Council Member Brewer asked DAB members if there were any corrections to the May 21, 2001 DAB minutes. There were a few corrections noted on page four and page six. On page four, "35th and 47th Streets" should read "37th and 45th Streets". Also on page four, "over twenty years" should read "over a twenty year period". On page six, under James Thompson should read "a 35 year KGE employee".

Council Member Brewer asked for a motion to approve minutes with stated corrections. **Carrie Jones Williams (Ken Hemmen)** made a motion to accept the minutes with the noted corrections. Motion carried (10-0).

Approval of Agenda

Council Member Brewer asked the DAB and public if there were any additional items that needed to be added to the agenda. Being none, **Hemmen (Brown Foster)** moved to accept the agenda. Motion carried (10-0).

Public Agenda

1. Scheduled items

No items were submitted

2. Off-agenda items

No items were submitted

Unfinished Business

No items were submitted

Staff Reports

No items were submitted

Public Works

No items were submitted

Planning Cases

3. Case No.: CUP2000-00054 DP-08; ZON2000-00056; University Gardens C.U.P. Amendment # 9

Request: Change of a Community Unit Plan to allow amend the permitted uses on Parcel 2 to allow indoor storage of construction equipment and vehicles on property zoned "LC" Limited Commercial at the captioned location.

Location: Northeast corner of 21st and Oliver

"MAPD Staff Report" – previously distributed
Updated material also distributed

Scott Knebel, MAPD was present to provide background information on this case. **Knebel** stated that District I DAB members had previously heard this case on February 5, 2001 and been recommended to be denied by a 7-2 vote. Since that time the request had been modified by the applicant. The applicant had modified the request; requesting an attached building rather than a detached building. Additionally the applicant has changed the area/amount of land to be used. Given these modifications, City Council voted to send this case back to the District Advisory Board. **Knebel** gave the applicant an opportunity to present his information.

Bob Kaplan, a representative for the applicant, John McFadden showed DAB members a diagram of what had been proposed at the February meeting. **Kaplan** stated that occasionally Mr. McFadden had a work truck to store on the property, but in order to do that it was necessary to have a "GC", General Commercial zoning to store the vehicles. **Kaplan** also stated that the Planning Commission (MAPC) had approved a different plan that he and his client had submitted. **Kaplan** explained that Mr. McFadden only needed a garage to put the vehicles in, and therefore no longer needed to request "GC" zoning, but realized that the more appropriate zoning would be "OW", Office Warehouse. **Kaplan** stated that the "OW" zoning would allow Mr. McFadden to build a garage. **Kaplan** also stated that he and his client did realize that the "OW" zoning still did not fit in with the intended land use consideration and Mr. McFadden's lack of good housekeeping did cause problems with the neighbors. However, **Kaplan** did state that Mr. Mc Fadden had made significant efforts to clean the property and that the property looked much better. **Kaplan** went on to say that the current request for an attached garage, with a west side entrance, would be an enhancement to the property. The applicant is no longer requesting a zone change on 2.75 acres, but only asking for 7,700 square feet, 70 feet wide and 110 feet deep, be changed to "OW". Again, **Kaplan** stated that the applicant was requesting a zone change to "OW", Office Warehouse.

Greg Ferris was also present representing the applicant. **Ferris** stated that the zoning codes had changed since the last DAB meeting. **Ferris** also stated that the MAPC was willing to change the zoning to "OW", Office Warehouse, with the stated conditions. A few of the conditions include 1) The "GC" General Commercial zoning on parcel 2 should be limited to the indoor storage of construction equipment and; 2) Building must be composed of the same material as the existing building.; 3) The area must be landscaped. **Ferris** stated that he believed the conditions would enhance the area. A complete list of MAPC stipulations includes:

- That portion of Parcel 2 that is zoned "GC" General Commercial shall be limited to the indoor storage of construction equipment and vehicles only inside the building and to no other "GC" uses. There shall be no outdoor storage of construction equipment, vehicles or materials of any kind permitted.
- The new building shall be attached to the existing building and have the same materials and design as the existing building. All overhead doors of the new building shall be located on the west facade of the building.
- A landscaped street yard, with at least 1/3 of the required shade yard trees being evergreen, shall be established and maintained along the east property line.
- Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
- The transfer of title of all or any portion of the land included within the Planned Unit Development does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land and be binding upon the present owners, their successors and assigns, unless amended.
- The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

Members of the public who spoke in opposition of the zoning change were **Barbara Johns** and **Steve Roberts**, both of the Chisholm Creek Neighborhood Association. **Johns** stated that the upkeep of the applicant's property was still a concern. While the applicant had made some effort and improvement in better maintaining the property (keeping the property free of dirt piles and construction materials and other debris), the property was still not free of trash and discarded materials.

Roberts, president of the Chisholm Creek Neighborhood Association stated that his major concern was that the applicant had continued to present a different request at each hearing (both DAB meetings, MAPC, and City Council) although documentation for each hearing stated that the applicant was requesting a zone change from "LC" *Limited Commercial* to "GC" *General Commercial* on 2.75 acres

and requested to amend to CUP to allow indoor storage of construction equipment and vehicles on Parcel 2; modifications to the requests only seemed to occur at public meetings. Roberts also stated that the "OW" zoning change, if granted would address some of the concerns of the Neighborhood Association. However, Roberts stated that he still felt that this contractor storage facility was an inadequate use for the area.

James Roseboro, President of the Northeast Heights Neighborhood Association also spoke in opposition. **Roseboro** stated that the upkeep of the McFadden property had been a concern since 1995, and that not much had changed since that time.

One resident of the area, **Thomas Johnson** spoke in favor of the zone change.

The concerns of the DAB members included the following; 1) Traffic; 2) Storage facility/garage entrance location; 3) The number of vehicles intended to occupy the storage facility. 4) Property upkeep/maintenance and 5) The applicant's relationship with the neighbors.

After a lengthy discussion by DAB members, Council Member Brewer asked for a motion.

Traylor (Moore) made a motion to approve a zoning change to "OW" Office Warehouse to the, subject to the conditions outlined by MAPC. The DAB members voted, 9-1 to recommend approval of the application of the *Zone change* request to "OW" Office Warehouse.

Jones Williams suggested that the applicant work to foster better relations with the neighbors by joining the Neighborhood Association.

(at 8:25 p.m. DAB member Debby Moore left)

4. Case No.: CUP2001-00020 (DP-73 Amendment #7) with ZON2001-00033

Request: Amendment to Parcel 3 to permit office use of one lot and a zone change to "NO"
Neighborhood Office

Location: Northeast corner of 25th Street North and Mainsgate

See the attached "MAPD Staff Report"

Scott Knebel, MAPD was present and summarized the case. **Knebel** stated that the applicant operates an office for a services-type business of brokering, dispatching, and accounting for trucking services from his single-family residence located at the northeast corner of 25th Street North and Mainsgate (7003 E. Mainsgate). An office is a permitted home occupation on property, such as the subject property,

in the "SF-6" Single-Family Residential zoning district; however, the Unified Zoning Code does not permit non-resident employees for home occupations in the "SF-6" district. The applicant currently employs five non-resident employees, who park in a paved parking area owned by the homeowner's association located across 25th Street West to the south in an open space reserve used for recreation.

Knebel also explained that since the captioned area falls within a CUP (Community Unit Plan), in order to grant the "NO" Neighborhood Office zone change, the CUP must be amended. **Knebel** stated that the Planning Department was recommending denial of the zone change.

Clark Nelson, the applicant's attorney, provided comments on behalf of the applicant, Robert Sudbury. **Nelson** stated that there had been no opposition to the zoning change request until after planning had posted the sign. Nelson also stated that Mr. Sudbury had been in business for over fifteen years without incident. **Nelson** explained that Mr. Sudbury only has his employees come to his home to use computers and telephones to broker and schedule transportation. No trucks ever come to the Sudbury home. **Nelson** stated that the City's home occupation license has ten criteria. Sudbury meets nine of the ten criteria outlined in the license; which is that the individuals running the business must live at the residence. **Nelson** stated that there are four people that Mr. Sudbury employs that do not live with him. The community has off street parking, but the Sudbury home is the only home around the parking area. (Nelson presented pictures of the area for the DAB members to view.) **Nelson** stated that he believed granting the zoning change requested would be fair and reasonable for the Board to approve.

Sudbury stated that he had been operating his home-based business for 23 years, and that the first complaint he had received was in March. **Sudbury** also stated that the Office of Central Inspection (OCI) had come out to his business twice and cited him with violating ordinance 4E. **Sudbury** stated that he never allowed trucks to come into the neighborhood. **Sudbury** said that his business is to dispatch for forty-eight states and that his business has been able to keep a low profile so that it would not disturb the neighbors. **Sudbury** stated that he appreciated the DABs consideration.

Council Member Brewer asked if any members of the public were present to speak against the zoning change. **David Donoghue**, president of the Sycamore Village Home Owner's Association gave a statement. **Donoghue** stated that the Sycamore Village Home Owners Association represented 545 homeowners. **Donoghue** also stated that the homeowners association covenants strictly prohibit home based businesses. **Donoghue** stated that Sudbury never approached the board members of the homeowners association to request operation of a home-based business. **Donoghue** also stated that if the zone change were approved it would override the Homeowner Association covenants.

Council Member Brewer asked DAB members if they had any questions. **Jones Williams** and **Willard Walker** asked how many complaints had been received from the homeowners, in regards to Mr. Sudbury running his business. **Knebel** responded and stated that the Planning Department had received nine

written complaints. **Donoghue** stated that he had received about six complaints, but the Homeowners Association Board began their investigation after the first complaint, which was reported to OCI.

Traylor stated that Sudbury's business was unique in that he had no inventory. **Traylor** also stated that it maybe the DAB could recommend to include stipulations that the zoning change only be valid while Sudbury is the resident/owner of the property. **Knebel** replied and stated that by law, that would not be enforceable.

Tully-Gerber asked Sudbury if he had been operating his business without being aware of the rules. **Sudbury** replied and stated that he had been unaware of ordinance 4E. **Sudbury** also stated that he had not been renewing his business license on an annual basis, because he was unaware he needed to do so,

Robinson Porter asked Sudbury if the homeowner's association covenants had been in place before or after he built his home. Sudbury did not answer. **Woodard** asked Sudbury if he was not aware that the covenants went with the land he had purchased. **Sudbury** stated that he was not aware that the covenants went with the land. **Jones Williams** asked Sudbury if he was aware that the "NO" Neighborhood Office zoning use had restrictions such as amount of office space, number of parking spaces, etc. **Sudbury** stated that he planned to go to the next homeowner's association meeting to request a letter granting permission of the parking space. **Sudbury** also stated that he didn't want to inconvenience anyone else.

Council Member Brewer asked for a motion. **Woodard (Brown Foster)** made a motion to deny the zoning change, based on the recommendation from the MAPD. Motion carried, (7-2) to recommend denial of the zoning change.

Board Agenda

No items submitted

Page Eight
June 4, 2001
District I
DAB Meeting
MINUTES

General Comments/Announcements

Council Member Brewer informed the DAB members of the upcoming DAB orientation – Saturday, June 23, 2001. The Neighborhood Assistant stated that information would be sent out which would include an agenda of the day's activities.

Council Member Brewer also reminded DAB members that the July meeting would be held on the optional meeting date, Monday, July 16th. No DAB meeting will be held on Monday, July 2, 2001 for District I, due to the July 4th holiday.

Traylor (Tully-Gerber) moved to adjourn the meeting. The motion carried unanimously and the meeting was adjourned at 9:20 p.m.

Respectfully Submitted By,

Heidi Framer-Drew
Neighborhood Assistant,
Council District I